

**STATEMENT OF
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PRESIDENT & CEO, GECU OF EL PASO, TX
ON BEHALF OF THE

CREDIT UNION NATIONAL ASSOCIATION (CUNA)

ON THE
UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT
BEFORE THE
HOUSE SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL
MONETARY POLICY, TRADE, AND TECHNOLOGY

APRIL 2, 2008**

Good morning, Chairman Gutierrez, Ranking Member Paul, and members of the Subcommittee.

Thank you for inviting me to testify today on the Unlawful Internet Gambling Enforcement Act of 2006 on behalf of the Credit Union National Association (CUNA).

I am Harriet May, President and CEO of GECU in El Paso, Texas. I am a member of the CUNA Board of Directors and serve on CUNA's Executive Committee as Board Secretary. CUNA is the largest credit union trade association, representing approximately 90 percent of the nation's 8,400 state and federally chartered credit unions which serve approximately 90 million members.

GECU (formerly known as Government Employees Credit Union) has served the families of El Paso (TX) County since 1932, when 11 postal employees pooled \$5 each to serve fellow workers. Today, we are the largest locally owned financial institution in the area, with just over \$1.4 billion in assets and serving over 277,000 members.

When I received the invitation to appear today, I must say that I relished the opportunity to talk with you about the range of serious and practical concerns that CUNA believes will make compliance under the Act extremely difficult, if not impossible for financial institutions. That is why our comment letter on the proposed rules took the extraordinary step of

urging that a moratorium be imposed on the implementation of the law until a workable regulation could be developed.

I do want to be clear that CUNA supports enforcement of reasonable laws to prohibit unlawful Internet gambling. However, the Act and proposed rules would inflict a set of unreasonable policing requirements which will undoubtedly prove difficult for financial institutions to meet. In addition, Congress' objective to crack down on illegal Internet gambling would not be furthered under these strictures. A set of unclear and multi-faceted new requirements such as what is proposed, would without question divert credit unions from their intended purpose of providing financial services to their members.

Given the time constraints of the hearing today I would like to focus on major concerns that have left us quite frankly frustrated with the law and proposed regulations.

One of our most fundamental concerns with implementing this law is that credit unions and other financial institutions are in business to provide financial services to their communities. With the current mortgage crisis and other economic pressures, we hope that Congress will reconsider whether this is an appropriate time to ask us to dedicate resources to try to comply with what we view as an unworkable law. I want to emphasize that GECU and other credit unions have never made predatory subprime mortgage loans – those types of loans would be totally contrary to the philosophy and operations of member-owned credit unions. But all of us are facing the fallout of those loans.

Credit unions and other financial institutions are already burdened with heavy policing responsibilities. Our compliance responsibilities under the Bank Secrecy Act and Office of Foreign Assets Control (OFAC) rules are extraordinary. We do not think that the Internet Gambling law could be implemented without creating a list similar to what OFAC publishes to tell financial institutions who are the “bad guys.”

We are equally concerned that while institutions would be required to identify and block transactions that fund illegal gambling activities, the proposed rules provide no mechanism to verify when a payment transaction is intended for “illegal Internet gambling.” The explanatory information

accompanying the proposed regulation says that it would basically be impossible for the federal government to develop and maintain such a list.

We feel that while it will be difficult for the federal government to figure out whose transactions are to be blocked, it will be that much harder for individual financial institutions that handle checks, wire transfers, and credit cards to do so.

HR 2046, the Internet Gambling Regulation and Enforcement Act, introduced by House Financial Services Committee Chairman Barney Frank would require Internet gaming businesses to be licensed and pay user fees to the Financial Crimes Enforcement Network (FinCEN). The bill could be the vehicle for the Department of Justice to take the lead in not only monitoring the entities that are complying with registration, but also developing a list of those businesses or individuals involved in illegal Internet gambling activities. Such an approach would promote compliance for institutions by providing them a much greater level of certainty as to whether a transaction for a particular entity should be prevented. Exemptions and safe harbor provisions would help provide a regulatory framework that might actually be able to work.

Even if a list is developed, the current Internet Gambling law contains a basic flaw that also exists with complying with OFAC requirements, and that is the inclusion of checks under the law. The law says that checks cannot be written to pay illegal Internet gambling debts. But the check-processing systems would come to a stand-still if financial institutions would have to review each check to determine if the payment was made to fund illegal gambling activities. Software packages have been developed to assist in the compliance with OFAC requirements for monitoring new accounts, wire transfers and other activities, but never can be used for matching names on a check's payable to line. Similar software could be developed to check names on a government list for illegal Internet gambling activities, but would have the same limitations.

Under the Act, institutions must establish and implement policies and procedures to identify and block restricted transactions or rely on policies and procedures established by the payments system, as provided under the proposal. We are concerned that the scope of these requirements is not realistic. To illustrate, the proposal calls for participants including card issuers to monitor certain websites to detect unauthorized use of a covered

card system, including monitoring and analyzing payment patterns. Such activities would be time consuming and would detract from the institution's own businesses purposes.

The examples also direct covered entities to address "due diligence" without defining or explaining what is meant by that term. Regulators intend that due diligence apply when establishing or maintaining a customer relationship and that a flexible risk based approach be used, based on the level of risk a customer poses. This vague guidance makes it difficult for financial institutions to adequately comply.

The Act also states that institutions that "reasonably believe" a transaction is restricted will not incur liability for incorrectly blocking the transaction. We appreciate the safe harbor but need clear guidance on what is necessary for institutions to show that their belief was "reasonable." There should also be a safe harbor when institutions with good faith policies and procedures inadvertently misidentify and thus fail to block a restricted transaction.

Further, the regulators contemplate that when restricted transactions are involved, an account could be closed under an institution's compliance procedures. The safe harbor should cover situations in which an account is closed based, in good faith, on an erroneous analysis or treatment of a transaction that the institution reasonably believed was restricted. Situations involving a decision to decline to open an account should also be covered by the safe harbor.

The federal financial regulators will be responsible for enforcing the rule. However, it is not clear how this enforcement would occur.

Lastly, the Act does not include an effective date. However, while we do not believe this proposed regulation should be promulgated, if the agencies are required to proceed, institutions should have at least 18 months if not longer to try to figure out what to do and conform to the new requirements.

In summary, Mr. Chairman, CUNA certainly appreciates your leadership in reviewing this matter. We do not condone illegal Internet gambling or want to see it continue or grow. However, the current statute and implementing proposal contain several components of great concern, and we urge Congress to take action to address the hardships that will otherwise arise.